International Law Studies—Volume 30

International Law Situations

SITUATION 11

ABSENCE OF LOCAL AUTHORITY

In state A, owing to uprisings in ports O and P, the local authorities are unable to maintain order. A vessel of war of the United States, the *Naso*, is in port O and a companion vessel, the *Paxto*, is in port P. No other vessels of war are in ports of state A.

(*a*) In port O the crew of a merchant vessel of state A, the *Moon*, engages in a dispute with the crew of a merchant vessel of state B, the *Sun*. Shots are exchanged by the crews. The master of the *Moon* requests the aid of the *Naso*.

(*b*) Later the *Paxto*, in leaving port P, runs aground and local tugs refuse to aid in pulling the vessel off unless paid in advance for the service.

(*c*) Three members of the crew of the *Comet*, a vessel belonging to the United States Shipping Board and chartered to a private company, desert in port O. The master of the *Comet* requests that marines from the *Naso* may be detailed to apprehend the deserters.

(*d*) Mr. B, a citizen of the United States doing an import business in port O, is refused entrance for one of his vessels, the *Western*, on the ground that port O, owing to disturbed conditions, is closed. There is no force before port O. Mr. B has previously signed an agreement with the authorities of state A that he will not appeal to the United States for protection. He appeals to the commander of the *Naso*.

What should be done in each case? Why?

SOLUTION

(*a*) The *Naso*, under the situation as stated, where the local authorities are unable to maintain order owing to uprisings in the port—

(1) May not interfere in any partisan manner in a struggle, but may protect nationals of the United States and their property.

(2) When the *Naso* is the sole representative of responsible authority, if the struggle is not political, it may act to preserve life.

(3) The action should be confined to the measures essential to that end. This may involve the threat to use force or even the use of force.

(*b*) Pay for the salvage service in advance and require by force, if necessary, the rendering of the service for which payment is made.

(*c*) Inform the master of the *Comet* that under the act of March 4, 1915, no marines may be detailed to apprehend the deserters.

(*d*) Escort the *Western* into port, guarding against the furnishing of aid to either party in state A. The agreement of Mr. B with the authorities of state A has no effect.

NOTES

(*a*) *Order in port.*

Order in port.—The ports of a state are under the jurisdiction of that state. The state has in the port both rights and duties. It is generally admitted that a state has complete jurisdiction over its own merchant vessels in its ports and over foreign vessels for matters other than those relating to the internal economy of the vessel. The maximum amount of freedom consistent with the well-being of the port is usually accorded to vessels of war and other public vessels of a foreign state.

It is often argued that as man existed before the state the right of self-preservation of the individual takes precedence over any state right on the ground that an individual would not transfer to the state a right which might involve his own existence. When, however, the right to declare war is intrusted to the state, many rights of the individuals are subordinated and even, in case of need, his right to exist in personal safety when the well-

being of his state is threatened. The unity embodied in the state may from a broad point of view be more valuable to humanity than the individual or individuals who may be sacrificed to maintain it. Even extremists admit in fact that the law of humanity may sometimes take precedence over other law. It is, however, not always easy to determine what is meant by the law of humanity. Some writers reason that order is essential both to the existence of the state and of humanity. Each state would for itself determine the degree and type of order which should prevail within its limits. Some writers maintain that since there is no constituted collective world authority each state has the right to punish or to prevent violations of the right of humanity. (Grotius lib. ii, ch. xx, p. 40.) When there is no standard by which the rights of humanity can be measured, the operation of such a doctrine might lead to many arbitrary acts on the part of states having differing views as to the right of humanity. The concepts of the right of humanity, however, vary greatly among the civilizations of the earth. This is evident when the grounds advanced as justifying intervention by one state in affairs of another state are concerned.

The right to life has always been regarded as fundamental and one that should be assured by all possible means in time of peace. When security involving risk of life is at stake in the interior of a state, a foreign state would not ordinarily be in any position to act other than by bringing the matter to the attention of the state within whose jurisdiction the situation has arisen. This method of procedure has often been followed in case of protests against racial and antiforeign uprisings.

The maintenance of order in a port by the state within whose jurisdiction the port may be is presumed. Obedience to port authorities is similarly presumed to be obligatory. Entrance of a foreign vessel of war to a port is not regarded as exceptional or requiring special explana-

tion, though ordinarily notification of the proposed visit is given. The world at large is interested in the maintenance of order and each state should make such efforts to that end as may be possible without interfering with the rights of other states.

Necessity.—Early writers on international law found the grounds for many acts in the doctrine of necessity. Grotius and writers upon natural law often referred to necessity. Bartolus and Machiavelli sometimes seemed to bring the doctrine of necessity close to that of expediency. Self-defense has usually been acknowledged as a basis upon which a plea of necessity could rest. In the examination of the doctrine of necessity, it is customary to distinguish military necessity or necessity in time of war from other necessity. The use of exceptional means in defense of an unquestioned right is to be distinguished from the use of the same means in defence of an act which is not based upon an accepted right. An exceptional act under exceptional circumstances may not need the same grounds for its support as would an act based on necessity and in disregard of law.

In acting under the plea of necessity and in disregard of international law the necessity must be "instant, overwhelming, and leaving no choice of means and no moment for deliberation" and the measures taken must be kept clearly within the need.

The saying "necessity knows no law" is much more easy to cite than to sustain. It is, however, considered that in circumstances where there is no law or where law is not operating or where it can not operate, one who has power may be under obligation to use it wisely.

Protection and aliens.—Aliens may be called upon in emergency to aid in maintaining order or averting disaster. This has been generally admitted when savage natives have threatened attack upon a town or when fire is spreading. The basis of such a call is nonpolitical and communal security.

In 1888 Mr. Bayard, Secretary of State, in a note to the American minister to the Netherlands said:

It is well settled by international law that foreigners temporarily resident in a country can not be compelled to enter into its permanent military service. It is true that in times of social disturbance or of invasion their services in police or home guards may be exacted, and that they may be required to take up arms to help in the defense of their place of residence against the invasion of savages, pirates, etc., as a means of warding off some great public calamity by which all would suffer indiscriminately. The test in each case, as to whether a foreigner can properly be enrolled against his will, is that of necessity. Unless social order and immunity from attack by uncivilized tribes can not be secured except through the enrollment of such a force, a nation has no right to call upon foreigners for assistance against their will. (1888 U. S. For. Rel., vol. ii, p. 1325.)

Intervention.—Intervention by a state in the affairs of another state is now regarded as an act to which resort should be had only in rare instances. There is held to be no need for such action as was formerly common, as states are supposed to accept and apply fairly uniform standards of action. Even the doctrine of intervention on the grounds of humanity is now rarely advanced except as a cloak for aggression, which it is hoped the provisions of the covenant of the League of Nations and the practice thereunder may make wholly unnecessary. Prof. E. C. Stowell, who has given much attention to the subject of intervention, says:

The right of the sovereign state to act without interference within its own territory, even though it be no more than a presumption, is of such importance to the well-being of international society that the states in their wisdom, as evidenced in their practice, have been jealous of lightly admitting the plea of humanity as a justification for action against a sister state, and we find that intervention on this ground has been rather rigidly limited to specific cases, and conditioned in each of them upon the existence of a certain state of facts. (E. C. Stowell, International Law, p. 352.)

Some of the provisions of the seamen's act of March 14, 1915 (38 U. S. Stat., p. 1164), have been advocated as based on the desire to advance humanity.

Interposition of foreign forces.—Foreign forces have often interposed for the protection of their nationals. There have been occasions when foreign forces have acted to preserve order even when nationals have not been directly involved. In 1929 the Department of State of the United States issued the second edition of a pamphlet entitled "Right to Protect Citizens in Foreign Countries by Landing Forces." Cases are mentioned in which protection of nationals is not the object of the landing of the forces.

In February last the *Tuscarora*, Commander Belknap, then at the port of Honolulu, in conjunction with the *Portsmouth*, Commander Skerrett, at the earnest solicitation of the Government, was instrumental in aiding in the restoration of order in that city. On the 12th of that month, on the occasion of the election of a King, riotous proceedings occurred, and at the pressing request of the authorities, detachments were landed from those vessels the following day. Their commanding officers were prompt on the occasion to comply with the wishes of the Government to aid in restoring order and be in readiness to protect the interests of our own citizens should they be jeopardized. In scarcely more than 15 minutes after signal on the 13th of February, companies comprising 150 officers, bluejackets, and marines, including a Gatling gun from the *Portsmouth*, were landed and marched to the scene of action. It was only necessary for the battalion to approach for the rioters to disperse. The courthouse was occupied and sentries posted at other public buildings. No further disturbances followed, and the new King was inaugurated. On the 16th a part of the force was withdrawn, and on the 20th the remainder, the Government signifying that their presence was no longer needed. (Right to Protect Citizens in Foreign Countries by Landing Forces. Memorandum of the Solicitor for the Department of State, p. 67; see also Report of the Secretary of the Navy, 1874, p. 8.)

In 1876, when conditions were disturbed in Mexico, forces were also landed and the Secretary of State of the United States notified the Mexican minister as follows:

It is proper to inform you that this department was yesterday by telegraph apprised by the consul of the United States at Matamoros that General Gonzalez, the chief insurrectionary officer

there, had informed him of his intention to abandon that city in consequence of the approach of General Escobedo, who was then within 30 miles. The consul adds that as there were no civil authorities he had asked Commander Johnson to land a small force to protect the lives and property of foreigners, and that this had been done. This proceeding seems to have been so obviously necessary and proper under the circumstances that it is hoped the Mexican Government will not disapprove the act, especially as the force will be withdrawn as soon as the authority of that Government shall be restored. (Right to Protect Citizens in Foreign Countries by Landing Forces, p. 67.)

Instructions, 1891.—The landing of forces for maintenance of order in a disturbed area has occurred, particularly in American and Asiatic territories, as in the time of unsettled conditions in Chile in 1891. Secretary Tracy, in instructions to Rear Admiral Brown in 1891, laid down certain principles in time of disturbed conditions:

As a further and more explicit guide for your action, you are directed:

(1) To abstain from any proceedings which shall be in the nature of assistance to either party in the present disturbance, or from which sympathy with either party could be inferred.

(2) In reference to ships which have been declared outlawed by the Chilean Government, if such ships attempt to commit injuries or depredations upon the persons or property of Americans, you are authorized and directed to interfere in whatever way may be deemed necessary to prevent such acts; but you are not to interfere except for the protection of the lives or property of American citizens.

(3) Vessels or other property belonging to our citizens which may have been seized by the insurgents upon the high seas and for which no just settlement or compensation has been made are liable to forcible recovery; but the facts should be ascertained before proceeding to extreme measures and all effort made to avoid such measures.

(4) Should the bombardment of any place, by which the lives or property of Americans may be endangered, be attempted or threatened by such ships, you will, if and when your force is sufficient for the purpose, require them to refrain from bombarding the place until sufficient time has been allowed for placing American life and property in safety.

You will enforce this demand if it is refused; and if it is granted, proceed to give effect to the measures necessary for the security of such life or property.

5. In reference to the granting of asylum, your ships will not, of course, be made a refuge for criminals. In the case of persons other than criminals, they will afford shelter wherever it may be needed, to Americans first of all, and to others, including political refugees, as far as the claims of humanity may require and the service upon which you are engaged will permit.

The obligation to receive political refugees and to afford them an asylum is, in general, one of pure humanity. It should not be continued beyond the urgent necessities of the situation, and should in no case become the means whereby the plans of contending factions or their leaders are facilitated. You are not to invite or encourage such refugees to come on board your ship, but should they apply to you your action will be governed by consideration of humanity and the exigencies of the service upon which you are engaged. When, however, a political refugee has embarked, in the territory of a third power, on board an American ship as a passenger for purposes of innocent transit, and it appears upon the entry of such ship into the territorial waters that his life is in danger, it is your duty to extend to him an offer of asylum.

6. Referring to paragraph 18, p. 137 of the Navy Regulations of 1876, which is as follows:

"If any vessel shall be taken acting as a vessel of war or a privateer without having proper commission so to act, the officers and crew shall be considered as pirates and treated accordingly."

You are informed that this paragraph does not refer to vessels acting in the interests of insurgents and directing their hostilities solely against the state whose authority they have disputed. It is only when such vessels commit piratical acts that they are to be treated as pirates, and unless their acts are of such character or are directed against the persons or property of Americans you are not authorized to interfere with them.

7. In all cases where it becomes necessary to take forcible measures, force will only be used as a last resort, and then only to the extent which is necessary to effect the object in view. (House Exec. Doc., 1st sess. 52d Cong., 1891–92, vol. 34, 245.)

Protected zones.—In recent years when local authorities have been unable to maintain order, foreign forces have sometimes declared that within certain defined areas no fighting should take place. These areas have often

been termed "neutral zones," though war in the "legal sense" did not exist, but war in the "material sense" did exist.

In listing occasions on which American forces have been landed in foreign countries, the Department of State, in the pamphlet, Right to Protect Citizens in Foreign Countries by Landing Forces, says:

In January, 1904, a revolution was going on in the Dominican Republic and the Navy Department had sent the U. S. S. *Detroit*, Commander A. C. Dillingham commanding, to Puerto Plata, on the north coast, to protect American lives and property. H. B. M. S. *Pallas*, C. Hope Robertson commanding, was also there for a similar purpose.

The Jiminez faction, with Eugenio Deschamps in local command, had possession of the city of Puerto Plata. Forces under General Cespedes, operating in behalf of the Morales provisional government, approached the place along the coastal plain from the east with the declared intention of attacking and taking it. It was unfortified, and the Deschamps troops intended to defend from the shelter of the dwelling and business houses.

Commanders Dillingham and Robertson established a cordon of flags outside of and around the entire town, notifying Deschamps and Cespedes that no fighting would be permitted within that area.

A few days later Cespedes commenced an attack, and Commander Dillingham placed his vessel in such a position that her fire could aid in preventing armed bodies entering the town. He also landed a guard which had instructions to prevent armed bodies crossing the line. The British ship seems to have been absent at this time, probably to get coal.

The Deschamps forces sallied out to meet their enemies and fought them beyond the cordon of flags. Being defeated, they retreated within the cordon, throwing down their guns as they passed it, and the town was immediately surrendered to the Cespedes forces (p. 73).

Bluefields, 1910.—In 1910 during the period of disturbed conditions in Nicaragua the British as well as the American naval officials took action to protect both nationals and nonnationals and their property. The commander of the British naval force informed the leaders of both parties of the Nicaraguan forces ashore that he proposed to land an armed guard if necessary saying:

The majority of the houses in Greytown are owned by British subjects and some by the subjects of other foreign powers. It is impossible, therefore, to fight in the town of Greytown without seriously risking the lives and property of these foreign subjects. From its situation the whole of the attack and defense of the town can take place well clear of the houses and the victory to one side or the other there decided.

This being so, I must insist that no fighting whatever take place in the town of Greytown; and if any does take place there, I shall consider myself at liberty to land a strong armed party and guns to stop it, and the offending party will be absolutely held responsible for any loss of life or damage of property caused thereby.

The Secretary of State reports that in a telegram from the consul at Bluefields:

Mr. Moffat says that Commander Gilmer issued a proclamation to the generals of the commanding forces of Estrada and Madriz and commander of *Venus* declaring that, in furtherance of protecting lives and property of American citizens and noncombatants, foreigners, within town of Bluefields, it is demanded—

First. That there be no armed conflict in the city.

Second. That until a stable government is established only such armed force, not to exceed 100 men, will be allowed in Bluefields, necessary to police and preserve order.

Third. There being no armed men of revolutionary forces in Bluefields, no bombardment of city will be permitted, as it could result only in destruction of lives and property of Americans and other foreign citizens. (1910 U. S. For. Relations, p. 745.)

Later in the same year the commander of the U. S. S. *Paducah* notified the forces contending in the neighborhood of Bluefields, Nicaragua, that he would oppose any attack on that city. The President of Nicaragua, Doctor Madriz, protested to President Taft that his, and other acts of the officers of the United States could not "be reconciled with the principles of neutrality proclaimed by the law of nations." In replying the Secretary of State on June 19, 1910, said:

As to the statements made in the telegram of Doctor Madriz to the President, the Government of the United States took only the customary step of prohibiting bombardment or fighting by either faction within the unfortified and ungarrisoned commer-

cial city of Bluefields, thus protecting the preponderating American and other foreign interests, just as the British commander had done at Greytown, where there are large British interests. (1910 U. S. For. Rel., p. 753.)

President Taft in a reply to a communication from the President of Mexico on the same subject reaffirmed the statement of the Secretary of State. (Ibid. p. 754.)

The President of Honduras similarly reported, January 29, 1911, that "the orders of the commanders of the English and American naval vessels in Puerto Cortes to restrict Government troops to a neutral zone, separated from its bases, places the troops at a great disadvantage." (Idem 1911, p. 297.)

Protection of foreigners.—There have been many examples where, in case local authorities are temporarily unable to afford the usual protection to their own nationals and to nationals of other states, protection has been afforded or order has been maintained by some authority not directly involved. In fact, it may be argued that such protection would be more disinterested than that afforded to nationals. Snow's International Law prepared for this Naval War College says:

> The British Admiralty Regulations provide for cases of this kind in the following terms:
>
> "Applications for the protection of subjects of foreign powers in amity with Her Majesty may be entertained in case none of their ships of war are present; the application should, however, be made through Her Majesty's minister or consul, and it should only be acceded to when the protection does not interfere with the public service nor with the orders under which the naval officer is acting."
>
> Though no regulation of this kind exists for the United States Navy, it can be considered as an established usage to extend similar protection under similar circumstances (p. 65).

In time of disturbed conditions, when local authorities were not able to maintain order, foreign states have often lent aid. Secretary of State Knox in 1912, writing in regard to sending naval vessels to Cuba, said to the American minister: "The vessels were sent solely to pro-

vide some place and means of safety and protection for Americans and other foreigners and for such moral effect as they might have." (1912 U. S. For. Rel., p. 261.) The Secretary distinctly disavowed any intention to intervene. In speaking before the Senate Committee on Foreign Relations the Secretary of State on May 24, 1911, said:

> Honduras has been the scene of seven bloody revolutions within the last 15 years. Within that time the United States has been compelled to intervene, in the interests of universal commerce and civilization, to close or to prevent sanguinary ruinous civil war within her borders. (Ibid. p. 584.)

In the same address the Secretary said:

> Whether rightfully or wrongfully, we are in the eyes of the world and because of the Monroe doctrine, held responsible for the order of Central America, and its proximity to the Canal Zone makes the preservation of peace in that neighborhood particularly necessary. (Ibid. p. 588.)

The Acting Secretary of State in 1912, writing to the Secretary of Navy, saying that the policy of the Department of State was one of nonintervention in Mexico, and that the commander of the U. S. S. *Des Moines* should maintain a strictly neutral attitude, added:

> It would be glad to have him report frequently upon the developments in the political situation and begs to say that it would also be glad to have him, after Americans and American interests have been adequately provided for, to afford such assistance and protection to foreigners and foreign interests as may be possible under the circumstances. (Ibid. p. 854.)

In 1912 in the harbor of Vera Cruz Commander C. F. Hughes, of the cruiser *Des Moines*, informed the German consul that "In case the city is bombarded, I shall afford the same protection to the above properties as I shall afford protection to property of American citizens." (Ibid. p. 864.) As a result the American consul wrote to the Secretary of State, November 27, 1912:

> The conduct of the American Government in its protection of the lives and property of foreigners and natives, and that of Com-

mander Hughes, of the *Des Moines*, in particular, is lauded, and expressions of gratitude and approval are heard on all sides. (Ibid. p. 870.)

Obligation of protection.—The abstract right of sovereignty and obligation of protection was set forth in the award of the Permanent Court of Arbitration in the case between the United States and the Netherlands relating to the Island of Palmas, made April 4, 1928:

> Territorial sovereignty, as has already been said, involves the exclusive right to display the activities of a State. This right has as corollary a duty: The obligation to protect within the territory the rights of other States, in particular their right to integrity and inviolability in peace and in war, together with the rights which each State may claim for its nationals in foreign territory. Without manifesting its territorial sovereignty in a manner corresponding to circumstances, the State can not fulfill this duty. Territorial sovereignty can not limit itself to its negative side—i. e., to excluding the activities of other States—for it serves to divide between nations the space upon which human activities are employed, in order to assure them at all points the minimum of protection of which international law is the guardian.
>
> Although municipal law, thanks to its complete judicial system, is able to recognize abstract rights of property as existing apart from any material display of them, it has none the less limited their effect by the principles of prescription and the protection of possession. International law, the structure of which is not based on any superstate organization, can not be presumed to reduce a right such as territorial sovereignty, with which almost all international relations are bound up, to the category of an abstract right, without concrete manifestations. (Arbitral Award, p. 17.)

President Coolidge on treaty of 1923.—In a message to Congress on January 10, 1927, President Coolidge gave a résumé of the events leading up to the situation existing at that time in Nicaragua and mentioned in particular the treaty of peace and amity signed at Washington by the five Central American Republics on February 7, 1923. In 1912, according to President Coolidge, the "United States intervened in Nicaragua with a large force and put down a revolution" and from "that time

until 1925 a legation guard of American marines was, with the consent of the Nicaraguan Government, kept in Managua to protect American lives and property."

On August 5, 1914, a treaty was signed by the United States and the Government of Nicaragua, by which the United States received the exclusive proprietary rights to build and operate an oceanic canal through Nicaragua as well as a 99-year lease of the islands in the Caribbean Sea known as Great Corn Island and Little Corn Island. "The consideration paid by the United States to Nicaragua was the sum of $3,000,000." "At the time of the payment of this money a financial plan was drawn up between the Nicaraguan Government and its creditors which provided for the consolidation of Nicaragua's obligations," and though the United States did not establish this plan by treaty, it "did aid through diplomatic channels and advise in the negotiations and establishment of this plan for the financial rehabilitation of Nicaragua."

In 1923, at the invitation of the United States, representatives of the five Central American countries, namely, Costa Rica, Guatemala, Honduras, Nicaragua, and Salvador met in Washington and entered into, among other treaties, a general treaty of peace and amity. Article II of this treaty specifically provides that "the Governments of the contracting parties will not recognize any other government which may come into power in any of the five Republics through a coup d'etat or revolution." "The United States was not a party to this treaty, but it was made in Washington under the auspices of the Secretary of State, and this Government has felt a moral obligation to apply its principles in order to encourage the Central American States in their efforts to prevent revolution and disorder."

In October, 1924 an election for president, vice president, and members of the Congress was held in Nicaragua, and this Government was recognized by the other Central American countries and by the United States,

and shortly afterwards the United States gave notice of its intention of withdrawing its marines. The marines, however, were not withdrawn until August, 1925, when it appeared "as though tranquillity in Nicaragua was assured." Within two months from this time General Chamorro and his supporters seized the Loma, the fortress dominating the city of Managua, and on January 16, 1926, following the resignation of President Solorzano, General Chamorro took office as President of Nicaragua. The four Central American countries and the United States refused to recognize him.

In a letter of January 22, 1926, the Secretary of State of the United States wrote to the Nicaraguan representative in Washington:

> This Government has felt privileged to be able to be of assistance in the past at their request not only to Nicaragua but to all countries of Central America, more especially during the Conference on Central American Affairs which resulted in the signing of a general treaty of peace and amity on February 7, 1923, between the five Republics of Central America. The object of the Central American countries, with which the United States was heartily in accord, was to promote constitutional government and orderly procedure in Central America, and those Governments agreed upon a joint course of action with regard to the nonrecognition of governments coming into office through coup d'état or revolution. The United States has adopted the principles of that treaty as its policy in the future recognition of Central American Governments, as it feels that by so doing it can best show its friendly disposition toward and its desire to be helpful to the Republics of Central America. (Congressional Record, vol. 68, pt. 2, pp. 1324–1326.)

Neutral zone at Bluefields.—After the coup d'état of General Chamorro in Nicaragua and the establishment of a new government, a revolution broke out in May, 1926, in the neighborhood of Bluefields on the east coast. This was at first suppressed by the troops of General Chamorro, but later a more violent revolution occurred in this district and requests were made to the United States for protection. Accordingly, the Secretary of State suggested to the Secretary of the Navy that war vessels be

sent "to the Nicaraguan ports of Corinto and Bluefields for the protection of American and foreign lives and property in case that threatened emergencies materialize." "* * * The Navy Department ordered Admiral Latimer, in command of the special service squadron, to proceed to Bluefields. Upon arriving there he found it necessary for the adequate protection of American lives and property to declare Bluefields a neutral zone. This was done with the consent of both factions; afterwards, on October 26, 1926, reduced to a written agreement, which is still in force." (Congressional Record, vol. 68, pt. 2, p. 1325.)

United States attitude.—In periods of disturbed conditions in foreign states the attitude of the United States has varied.

In the eighteenth century the United States was particularly liberal in recognizing that there was a right of revolution, and in the early days of the nineteenth century the policy of the United States was markedly in contrast to the legitimist theories at the time current in Europe. As Jefferson said in a communication to Morris in 1793:

> We surely can not deny to any nation that right whereon our own Government is founded, that everyone may govern itself according to whatever form it pleases and change these forms at its own will; and that it may transact its business with foreign nations through whatever organ it thinks proper, whether king, convention, assembly, committee, president, or anything else it may choose. The will of the nation is the only thing essential to be regarded. (1 Moore, Int. Law Digest, p. 120.)

In general this attitude was maintained up to the time of the Civil War, when domestic exigencies somewhat changed the attitude of the Northern States. This change was particularly evident, as what Mr. Seward called "an unquiet and revolutionary spirit" seemed to be spreading to other countries on the American continent. In 1866 Mr. Seward said:

> The policy of the United States is settled upon the principle that revolutions in republican states ought not to be accepted

until the people have adopted them by organic law with solemnities which would seem sufficient to guarantee their stability and permanency. This is the result of reflection upon national trials of our own.

From the time of the French Republic of 1870 there was for a period an inclination to recognize the party in de facto control of the organs dealing with international relations. Occasionally during the days of Mr. Blaine's occupancy of the office of Secretary of State policies wavered.

While during the nineteenth century questions of policy determined the attitude of the United States toward areas in which disturbed conditions prevailed, with the beginning of the twentieth century special interests of the United States in the area in which disturbed conditions prevailed became more influential. National interests, "dollar diplomacy," "big stick" policies, and the like indicated a considerable change.

The attitude toward the Caribbean, toward Mexico, toward the Central American States to the south of Mexico, toward Panama, toward the South American States, toward China, and toward disturbed areas in Europe was not uniform.

With the administration of President Wilson there was further considerable change in attitude, and a drift toward regarding attempts to overthrow governments by force as illegal on the American Continent. There was a favorable attitude toward the attempts in other parts of the world of minorities to embody themselves in political unities.

After 1921 there was a tendency to go back to an attitude involving support of de facto authority while endeavoring to clothe this in a legitimist form. The treaty of 1923 of the Central American States embodied this for that area. This did not, however, apply for the rest of the world. There was developing a sort of idea of regularization in addition to the de facto policy.

At the present time there seems to be much uncertainty as to what should be the attitude of the United States in case the legitimate authorities are unable to maintain order.

Résumé.—Under ordinary circumstances local port authorities would have jurisdiction over merchant vessels within their ports except in matters relating to the internal economy of the vessels. As to actions taking effect outside the vessel, the local authorities would have complete authority. These authorities are likewise under obligation to maintain order in the port.

In cases where local authorities have been unable to maintain order, as at times in Alaska, Bluefields, Nicaragua, Panama, China, etc., public vessels of foreign states in port at the time have often given protection not merely to their own citizens but also to other foreigners who otherwise might be in peril. It has come to be quite commonly accepted as a proper course of action that a vessel of war should in absence of other responsible authority use reasonable efforts to prevent violence.

The policy of the United States has changed from time to time in regard to recognition of States set up by revolutionary movements and in regard to the maintenance of order in the States to the south and elsewhere. In general the attitude has been that order should be maintained, and so far as its action could support order it would be available.

SOLUTION

(*a*) The *Naso*, under the situation as stated, where the local authorities are unable to maintain order owing to uprisings in the port—

(1) May not interfere in any partisan manner in a struggle, but may protect nationals of the United States and their property.

(2) When the *Naso* is the sole representative of responsible authority, if the struggle is not political, it may act to preserve life.

(3) The action should be confined to the measures essential to that end. This may involve the threat to use force or even the use of force.

(*b*) *Salvage.*

Salvage.—When assistance is rendered to a seagoing vessel which is in danger, compensation for the service in the form of salvage is due. It was recognized in early law that there was no obligation to pay salvage to any party whose duty is to serve the vessel in distress as to its crew, pilot, master, passengers, or tug. If the same persons from another vessel render aid resulting in saving a vessel in distress, salvage is allowed. Even if no amount has been agreed upon, the salvors are entitled to compensation. While a public vessel might not receive salvage for aiding a private vessel which is in peril, a private vessel might, if the conditions were reversed, be entitled to compensation. A life-saving crew in aiding a vessel in distress are simply performing their duty, as is a vessel of the Navy in affording aid to a vessel in case of mutiny on board.

The salvage contract may be inquired into by the court. If the contract is made under such conditions as involve no inequalities in the parties negotiating, as in engaging a wrecking company to raise or pull off a vessel that has been in its present condition for a year, that one or the other party had made a bad bargain, would not be a concern of the court. If, however, a vessel in immediate danger makes with the salvor a contract involving exorbitant charges, the court will take cognizance if the fact is brought to its attention. It is not the purpose of the court to allow excessive claims but to consider the elements entering into the salvor's service, such as the imminence of danger to the vessel and to the salvor, the value of the same, the skill, time, labor, degree of success, exceptional conditions, etc. Professional salvors would ordinarily be allowed a larger amount for the same service than a vessel which happened to be in the neighborhood. The reason is that the professional sal-

vage company is for the good of all to be encouraged to be available at a moment's notice to render aid and must accordingly incur the expense of such preparation for an uncertain employment of sometimes costly and exceptional equipment.

Salvage award.—The salvage award will be made by the court even if no contract has been made and even if the salvor merely responds to a call for help. The court in making the award will consider in a liberal manner the actual expenses to which the salvor has been put and then add what in its opinion is an amount sufficient to induce salvors to respond readily to calls for help and to assume the risks involved. If the claims of the salvors are not equitable in view of the conditions, or if payment to the salvor has been made under duress, the rescued vessel may find a remedy in the court.

Treaty of 1910.—A multilateral treaty relating to assistance and salvage at sea was signed at Brussels, September 23, 1910, and has since been ratified by the United States and by many other maritime states. (37 U. S. Stat., p. 1658.)

This treaty states:

ART. 6. The amount of remuneration is fixed by agreement between the parties and, failing agreement, by the court.

The proportion in which the remuneration is to be distributed among the salvors is fixed in the same manner.

The apportionment of the remuneration among the owner, master, and other persons in the service of each salving vessel is determined by the law of the vessel's flag.

ART. 7. Every agreement as to assistance or salvage entered into at the moment and under the influence of danger can, at the request of either party, be annulled or modified by the court if it considers that the conditions agreed upon are not equitable.

In all cases, when it is proved that the consent of one of the parties is vitiated by fraud or concealment, or when the remuneration is, in proportion to the services rendered, in an excessive degree too large or too small, the agreement may be annulled or modified by the court at the request of the party affected.

ART. 8. The remuneration is fixed by the court, according to the circumstances of each case, on the basis of the following considerations: (*a*) First, the measure of success obtained, the

efforts and the deserts of the salvors, the danger run by the salved vessel, by her passengers, crew, and cargo, by the salvors and by the salving vessel, the time expended, the expenses incurred and losses suffered, and the risks of liability and other risks run by the salvors, and also the value of the property exposed to such risks, due regard being had, the case arising, to the special adaptation of the salvor's vessel; (*b*) second, the value of the property salved.

The same provisions apply to the apportionment provided for by the second paragraph of article 6.

The court may reduce or deny remuneration if it appears that the salvors have by their fault rendered the salvage or assistance necessary, or have been guilty of theft, receiving stolen goods, or other acts of fraud.

ART. 11. Every master is bound, so far as he can do so without serious danger to his vessel, her crew and passengers, to render assistance to everybody, even though an enemy, found at sea in danger of being lost.

The owner of the vessel incurs no liability by reason of contravention of the foregoing provisions.

ART. 14. This convention does not apply to ships of war or to Government ships appropriated exclusively to a public service.

Legislation of the United States.—An act of March 9, 1920, provides that a United States consul may furnish security for release of a vessel owned by the United States.

SEC. 7. That if any vessel or cargo within the purview of sections 1 and 4 of this act is arrested, attached, or otherwise seized by process of any court in any country other than the United States, or if any suit is brought therein against the master of any such vessel for any cause of action arising from, or in connection with, the possession, operation, or ownership of any such vessel, or the possession, carriage, or ownership of any such cargo, the Secretary of State of the United States in his discretion, upon the request of the Attorney General of the United States, or any other officer duly authorized by him, may direct the United States consul residing at or nearest the place at which such action may have been commenced to claim such vessel or cargo as immune from such arrest, attachment, or other seizure, and to execute an agreement, undertaking, bond, or stipulation for and on behalf of the United States, or the United States Shipping Board, or such corporation as by said court required, for the release of such vessel or cargo, and for the prosecution of any

appeal; or may, in the event of such suits against the master of any such vessel, direct said United States consul to enter the appearance of the United States, or of the United States Shipping Board, or of such corporation, and to pledge the credit thereof to the payment of any judgment and cost that may be entered in such suit. The Attorney General is hereby vested with power and authority to arrange with any bank, surety company, person, firm, or corporation in the United States, its Territories and possessions, or in any foreign country, to execute any such aforesaid bond or stipulation as surety or stipulator thereon, and to pledge the credit of the United States to the indemnification of such surety or stipulator as may be required to secure the execution of such bond or stipulation. The presentation of a copy of the judgment roll in any such suit, certified by the clerk of the court and authenticated by the certificate and seal of the United States consul claiming such vessel or cargo, or his successor, and by the certificate of the Secretary of State as to the official capacity of such consul, shall be sufficient evidence to the proper accounting officers of the United States, or of the United States Shipping Board, or of such corporation, for the allowance and payment of such judgments: *Provided, however*, That nothing in this section shall be held to prejudice or preclude a claim of the immunity of such vessel or cargo from foreign jurisdiction in a proper case. (41 U. S. Stat., Pt. I, 527.)

The Porto Alexandre, 1920.—The statement of the case of the *Porto Alexandre*, which came before the British court in 1920, is as follows:

This is an appeal from a decision of Hill, J., who made an order that the writ and warrant for arrest, and all subsequent proceedings against the *Porto Alexandre* and freight, be set aside, but the proceedings against the cargo should stand. The learned judge was only concerned with the question of the ship, and this appeal has only reference to the ship.

The vessel in question was on a voyage from Lisbon to Liverpool, and she ran aground in the Mersey and three tugs were engaged to get her off. An action was brought, and the ship was arrested in respect of the services rendered to her by these tugs. The application which the learned judge granted was founded upon the contention that the vessel was the property of a sovereign state, the Republic of Portugal, and on that ground that she was exempt from arrest. The conclusion of fact at which the learned judge arrived was that it had been established that the ship was the property of the Portuguese Government at

the time of the arrest, and is still their property, and on that ground he made the order.

It is now contended that it is not sufficient for a sovereign or a sovereign state to allege that a vessel is the property of such sovereign or sovereign state, and that the allegation must go further and say the vessel is employed in the public service or on public service. ([1920] P. 30; see also, 1923 N. W. C., International Law Decisions, p. 51.)

The court further said:

In the days when the early decisions were given, no doubt what were called government vessels were confined almost entirely, if not exclusively, to vessels of war. But in modern times sovereigns and sovereign states have taken to owning ships, which may to a still greater extent be employed as ordinary trading vessels engaged in ordinary trading. That fact of itself indicates the growing importance of the particular question, if vessels so employed are free from arrest. * * *

If ships of the state find themselves left on the mud because no one will salve them when the state refuses any legal remedy for salvage, their owners will be apt to change their views. (Ibid.)

Treaty with Siam, 1920.—The treaty with Siam of 1920 definitely refers to salvage of a vessel of war:

ART. X. * * * If any ship of war or merchant vessel of one of the high contracting parties should run aground or be wrecked upon the coasts of the other, the local authorities shall give prompt notice of the occurrence to the consular officer residing in the district, or to the nearest consular officer of the other power. * * *

* * * such consular officers, owners, or agents shall pay only the expenses incurred in the preservation of the property, together with the salvage or other expenses which would have been payable in the case of the wreck of a national vessel. (42 U. S. Stat., Pt. II, p. 1931.)

Résumé.—In general, the law of the United States prohibits advanced payment for services or articles purchased. Of course, certain articles and services necessary for the carrying on of the ordinary business of the Government, such as payment for tolls, transportation in case of need, and the like, may require advanced payment.

In general, mariners are under no legal obligation to render aid to vessels in distress merely for the sake of

saving property, though there is a recognized obligation to make every effort to save life.

In the case of the *Paxto*, the local tugs do not refuse to aid in pulling the vessel off, but they do demand payment in advance. Under ordinary circumstances the obligation would be to communicate with and arrange for aid through the local consul at port P. The local consul would arrange for aid through the local authorities. The local authorities are not functioning. Accordingly the tug owners may be pursuing the only course that seems rational to them in demanding advance payment.

Under the general rules of admiralty, this might be regarded as action in duress, but admiralty courts provide that in such cases refunds in case of excessive charge shall be made. The advance payment, therefore, would not necessarily differ in amount from the equitable allowance which would be awarded by the court.

The tug owner may also be aware of the fact that he can not bring a public vessel before the court and that if he receives any payment at all, it may be after costly proceedings. There would, however, be practically no risk to the *Paxto* as the public vessel might bring the tug owner before the court in case of excessive charges.

The law of the United States forbidding advance payment in no way applies to the owner of a foreign tug, nor does it place him under any obligation to render service.

Salvage awards have been made to vessels in the naval service after July 1, 1918. (40 U. S. Stat., p. 705; see also suits in admiralty act, March 9, 1920, U. S. Comp. Stat., c. 95, sec. 1251¼; salvage act, August 1, 1912, U. S. Comp Stat., c. 268, sec. 2, sec. 7991.)

Salvage has also been awarded to other public vessels not strictly in the life-saving service. Salvage awards have also been made to vessels of the United States Shipping Board. (*The Impoco*, 287 Fed., 400.)

Owing to the fact that the local authorities are not functioning, the contract and its performance remains

wholly within the authority of the commander of the *Paxto.*

SOLUTION

(*b*) Pay for the salvage service in advance and require by force, if necessary, the rendering of the service for which payment is made.

(*c*) *Deserters.*

Act of March 4, 1915.—In 1915 an act was passed in the United States by which the provisions in regard to treatment of deserters embodied in existing treaties were to be terminated.

SEC. 16. That in the judgment of Congress articles in treaties and conventions of the United States, in so far as they provide for the arrest and imprisonment of officers and seamen deserting or charged with desertion from merchant vessels of the United States in foreign countries, and for the arrest and imprisonment of officers and seamen deserting or charged with desertion from merchant vessels of foreign nations in the United States and the Territories and possessions thereof, and for the cooperation, aid, and protection of competent legal authorities in effecting such arrest or imprisonment, and any other treaty provision in conflict with the provisions of this act, ought to be terminated, and to this end the President be, and he is hereby, requested and directed, within 90 days after the passage of this act, to give notice to the several governments, respectively, that so much as hereinbefore described of all such treaties and conventions between the United States and foreign governments will terminate on the expiration of such periods after notices have been given as may be required in such treaties and conventions.

SEC. 17. That upon the expiration after notice of the periods required, respectively, by said treaties and conventions and of one year in the case of the independent state of the Congo, so much as hereinbefore described in each and every one of said articles shall be deemed and held to have expired and to be of no force and effect, and thereupon section 5280, and so much of section 4081 of the Revised Statutes as relates to the arrest or imprisonment of officers and seamen deserting or charged with desertion from merchant vessels of foreign nations in the United States and Territories and possessions thereof, and for the cooperation, aid, and protection of competent legal authorities in effecting such arrest or imprisonment shall be, and is hereby, repealed.

SEC. 18. That this act shall take effect as to all vessels of the United States, 8 months after its passage, and as to foreign vessels 12 months after its passage, except that such parts hereof as are in conflict with articles of any treaty or convention with any foreign nation shall take effect as regards the vessels of such foreign nation on the expiration of the period fixed in the notice of abrogation of the said articles as provided in section 16 of this act. (38 U. S. Stat. Pt. I, p. 1184.)

In accordance with the act of March 4, 1915, the President gave notice of the termination of the treaties in contravention of the act, and regulations brought the act into operation.

Arrest of deserters.—By an act of June 4, 1920, provision was made for arrest within the United States of deserters from the military service of the United States.

ART. 106. *Arrest of deserters by civil officials.*—It shall be lawful for any civil officer having authority under the laws of the United States, or of any State, Territory, District, or possession of the United States, to arrest offenders, summarily to arrest a deserter from the military service of the United States and deliver him into the custody of the military authorities of the United States. (41 U. S. Stat., p. 808.)

This act is, however, merely domestic legislation and does not apply to deserters from foreign vessels.

SOLUTION

(*c*) Inform the master of the *Comet* that under the act of March 4, 1915, no marines may be detailed to apprehend the deserters.

(*d*) *Closure of ports.*

Closure of ports.—The closure of ports in the time of peace for various reasons is admitted as a legitimate act of a state. In time of war closure of ports by effective blockade has long been an unquestioned right. The closure of ports in time of insurrection by the declaration of an authority not having effective control is usually regarded as of no effect. The situation in Nicaragua in 1910 led also to some discussion and statements in regard to closure of ports. This was in part embodied in a com-

munication from Mr. Wilson, the Acting Secretary of State, to Mr. Peirce, the minister to Nicaragua:

DEPARTMENT OF STATE,
Washington, July 22, 1910.

Mr. Wilson instructs Mr. Peirce immediately to hand to the minister for foreign affairs a copy of the following reply which has been sent in answer to inquiries from American companies and copy of which has been given also to the Norwegian chargé d'affaires in Washington with further explanation of the situation:

"The Bluefields Steamship Co., as charterer of Norwegian steamers carrying American goods, and seven American firms as shippers have represented that the Norwegian Government has given instructions to Norwegian consuls with the result that agents and captains have been notified by Norwegian consular officers that the Government of Norway has been informed of the closing of the port of Bluefields, in Nicaragua, which is in the territory under the de facto control of the Estrada faction, by authority of orders made by the Madriz faction last October and on May 16, and that such agents and captains have been warned that the Norwegian Government can not protect them from any consequences which may follow in disregard of such orders of closure. These firms represent that this situation means the crippling of very important commercial and other American interests on those coasts.

"'Official reports just received from Bluefields seem to indicate that the reported action of Norway may have been based upon erroneous information. In the first place, it is now a well-settled and recognized principle of international law that ports in the possession of hostile forces can not be closed to foreign commerce by mere executive decrees of closure unless such decrees are followed and supported by effective blockades of the ports so closed. It would, therefore, seem that the reported Madriz decrees of October 13 and May 16, closing the port of Bluefields, are, in the absence of effective blockade at that port, devoid of effect or influence upon neutral commerce. In the second place, it would appear that even should a foreign government recognize the right of blockade by a ship of the character of the *Venus*, apparently the only blockading force possessed by Madriz, nevertheless as it is notorious that the *Venus* has, since her appearance at that port, been absent from Bluefields for long periods, on which occasions she is reported to have violated the rules of international law by bombarding other unfortified Nicaraguan towns, and also to have committed other acts of hostility, all so far from her base at Bluefields, it would appear

clear that were the contemplated blockade of Bluefields ever effective, it has long since ceased to be so, and is therefore without any value in international law, Bluefields now being under these circumstances an open port.

"As for the question of protection of American chartered ships and American cargoes by the United States, you are referred to the telegram from the Secretary of State to the Bluefields Steamship Co., under date of November 18, 1909: 'If the announced blockade or investment of the Nicaraguan port of San Juan del Norte (Greytown) is effectively maintained and the requirements of international law, including warning to approaching vessels, are observed, this Government would not be disposed to interfere to prevent its enforcement. A naval vessel will be ordered to Greytown to observe and report whether the blockade is effective.' To the letter of the Secretary of State to the Secretary of the Navy, dated May 24, 1910, which contained the following proposed instruction to Commander Gilmer, which instruction was given: 'The United States policy as to the blockade at Bluefields, whose announcement by the Madriz faction would seem to constitute a recognition on their part of the belligerency of the Estrada faction, will naturally be the same as that laid down in regard to the blockade at Greytown by the Estrada faction. The Secretary of State then held that if the announced blockade or investment was effectively maintained, and the requirements of international law, including warning to approaching vessels, were observed, the United States Government would not be disposed to prevent its enforcement, but reserved all rights in respect to the validity of any proceedings against vessels as prizes of war. In the present instance it should, however, be observed that a vessel which, by deceiving the authorities at a port of the United States, sailed therefrom in the guise of a merchantman, but had in reality been destined for use as a war vessel, by such act has forfeited full belligerent rights, such as the right of search on the high seas and of blockade.' Also the letter of the Secretary of State to the Secretary of the Navy as of June 3, regarding a proposed instruction to Commander Gilmer, which instruction was also given: 'This Government denies the right of either faction to seize American-owned vessels or property without consent of and recompense to the owners. In such cases, if you can ascertain ownership, you will instantly act in accordance with this policy.' And the letter from the Secretary of the Navy to the Secretary of State of June 7, containing the notifications issued by Commander Gilmer under date of June 3: 'I received a communication to-day from General Rivas, commanding Madriz forces, Bluefields Bluff, stating that certain vessels have been used by Es-

trada forces and that he would not permit vessels of Bluefields Steamship Co., Atlantic Navigation Co., Bellanger Co., and Cukra Co., all American companies, to pass through the waters held by Madriz forces. I informed him that Estrada had the right to use these vessels with consent of owners if properly remunerated, but while so used Rivas had the right to capture or destroy them; but when in the company's legitimate trade I would permit no interference with them. I have ordered guard American marines or sailors on vessels passing bluff when in legitimate trade. Have informed Rivas that if they were fired upon I would return the fire and would seize the *Venus* and *San Jacinto*, and that I would permit no interference with shipping of American firms in legitimate business.'" (1910 U. S. For. Rel., p. 756.)

In 1912 the Acting Secretary of State wrote to the Mexican ambassador in regard to a port in the hands of an insurgent, saying:

I beg to inform you that, under the rules of international law, a foreign port in the hands of insurgents (except where ingress or egress from such port is physically prevented by blockade or otherwise by the parent Government) is regarded as if it were still in the hands of the parent Government and so open to the intercourse and commerce of other nations. (1912 U. S. For. Rel., p. 736.)

Later in a communication to the chargé d'affaires in Mexico the Acting Secretary said:

DEPARTMENT OF STATE,
Washington, October 23, 1912—1 p. m.

Consul at Vera Cruz has received a communication from the commandery of the fleet and late collector of customs, stating: (1) That they had sent tug to meet American steamer *Seguranza* to notify the master that the port was closed by order of the Federal Government, as provided by section 6 of customs regulations, but that master insisted upon entering to consult with consul; (2) that war material might be among the cargo of the *Seguranza*, which under no circumstances should be unloaded, as port is closed to all legal transactions of loading and unloading; (3) that on account of the existing conditions said steamer should remain a very short time, so as to avoid exposure to possible accidental damage, which might give rise to claims, thereby straining the existing friendly relations.

You will inform the Mexican Government that the department understands that insurrectionary forces have taken and are now

in possession of Vera Cruz. With reference to the closure by mere executive or legislative act of Mexican ports held by insurgents, you will communicate to the foreign office the following as the position of the United States:

"As a general principle a decree by a sovereign power closing to neutral commerce ports held by its enemies, whether foreign or domestic, can have no international validity and no extraterritorial effect in the direction of imposing any obligation upon the governments of neutral powers to recognize it or to contribute toward its enforcement by any domestic action on their part. If the sovereign decreeing such a closure have a naval force sufficient to maintain an effective blockade, and if he duly proclaim and maintain such a blockade, then he may seize, subject to the adjudication of a prize court, vessels which may attempt to run the blockade. But his decree or acts closing ports which are held adversely to him are by themselves entitled to no international respect. The Government of the United States must therefore regard as utterly nugatory such decrees or acts closing ports which the United States of Mexico do not possess, unless such proclamations are enforced by an effective blockade." (Ibid., p. 901.)

The right to close ports except by effective blockade was also denied to Ecuador.

Renouncing protection.—A state has sometimes required that aliens agree not to claim protection of the states of which they are nationals as a condition under which they may reside and do business within the territory of the state. Some states have had laws to this effect, as in the Venezuelan constitution of 1893:

ART. 9. Foreigners are entitled to enjoy all the civil rights enjoyed by natives; and they shall be accorded all the benefits of said rights in all that is essential as well as in the form or procedure, and the legal remedies incident thereto, absolutely in like manner as said natives.

ART. 149. No contract of public interest celebrated by the National Government or by that of the States can be transferred, in whole or in part, to a foreign government. In every contract of public interest there shall be inserted the clause that "doubts and controversies that may arise regarding its meaning and execution shall be decided by the Venezuelan tribunals and according to the laws of the Republic, and in no case can such contracts be a cause for international claims." (1893 U. S. For. Rel., p. 733.)

Cases where attempts were made to cause a citizen to divest himself of his right to protection by his state arose frequently during the time when Mr. Bayard was Secretary of State. Secretary Bayard in varying words announced the principle: "No agreement by a citizen to surrender the right to call on his Government for protection is valid either in international or municipal law." (1887 U. S. For. Rel., p. 100.) While it may not be within the province of a Secretary of State of the United States to pronounce upon the municipal law of a foreign state, the opinion of Mr. Bayard as to international law has received general support.

An extended study of the responsibility of states was made and appeared in a report of research preparatory to the codification of law on responsibility of states for damages done in their territory to the persons or property of foreigners. At the end of the report presented by Professor Borchard on article 17, which read, "A state is not relieved of responsibility as a consequence of any provision in its own law or in an agreement with an alien which attempts to exclude responsibility by making the decisions of its own courts final; nor is it relieved of responsibility by any waiver by the alien of the protection of the state of which he is a national," it was said:

> What conclusion may be drawn as to the effect of the renunciatory clause?
>
> The prevailing view seems to be that the mere stipulation to submit disputes to local courts is confirmatory of the general rule of international law and will be so construed by the national government of concessionaries. If, however, the renunciation goes so far as to preclude recourse to diplomatic protection in cases of denial of justice, the renunciation of protection will not be considered as binding upon the claimant's government; for as in municipal law private agreement can not oust the jurisdiction of municipal courts, so in international law the private agreement can not prevent the employment of international remedies. Again, if there has been a confiscatory breach of the contract by the government, the claimant will be relieved from the stipulation barring his right to make the contract the subject of an international claim. While some arbitrators, notably Umpire

Barge, seem to have evolved the rule that the clause is binding upon the claimant, but not on his government, it is difficult to see how such an inconsistent rule can be applied, and in fact these arbitrators have taken jurisdiction of claims in such circumstances and made awards. Finally, the right of the government to submit the claims of its citizens to an international tribunal, is, it may be concluded, superior to the right or competency of the individual to contract it away, for whatever the individual's power to renounce a personal right or privilege, he does not represent the government, and is therefore incompetent to renounce a right, duty, or privilege of the government. In sum total, therefore, the better opinion seems to be that the renunciatory clause is without any effect so far as any changes or modifications in the ordinary rules of international law are concerned. (1929 Amer. Jour. International Law, Spec. Sup., p. 215.)

SOLUTION

(*d*) Escort the *Western* into port guarding against the furnishing of aid to either party in state A. The agreement of Mr. B with the authorities of state A has no effect.